

Memorandum

To: All Legislators
From: Tom Larson, Vice President of Legal and Public Affairs
Date: February 22, 2012
Re: Nonconforming structures and substandard lots – SB 472

The Wisconsin REALTORS® Association supports SB 472, legislation that provides owners of legal, nonconforming homes and substandard lots with greater certainty as to how they can repair, maintain and improve their property by (a) allowing property owners to repair and maintain legal, nonconforming homes and buildings, (b) clarifying that counties cannot adopt more restrictive standards than the standards set forth in NR 115 relating to (1) the expansion of nonconforming structures and (2) building on substandard lots in shoreland areas.

Background

A “nonconforming structure” is a home or building that does not meet one of the dimensional requirements found in the current zoning ordinance (e.g., setbacks, height requirement, lot coverage ratio). Generally, a building becomes nonconforming because a community changes the regulations after the home or building is constructed.

When a home is classified as “nonconforming,” significant restrictions are often placed on the ability **to maintain, improve, expand, or replace the building**.

- **These restrictions impact the value of the property** because purchasers are obviously unwilling to pay the same amount for a home with these restrictions as they would for the same home with no restrictions.
- **Lenders and title insurance companies are often reluctant to offer financing and title insurance policies** because these homes are considered to be a “higher risk” due to the fact that restrictions placed on the ability to maintain, repair and improve these structures reduces the functional life on the structures.

NR 115 contains both minimum standards and protections for property owners. – While Wisconsin’s shoreland zoning regulations are generally considered minimum standards, NR 115 was recently revised to include protections for property owners related to nonconforming waterfront homes and substandard lots. Under these recent changes, nonconforming waterfront homes and substandard enjoy the following protections:

- Unlimited maintenance and repair is allowed
- Expansion behind the 75-foot setback
- Vertical expansion (to a maximum height of 35 feet) only between 35 feet and 75 feet of the water if local mitigation requirements are satisfied
- No expansion between 35 feet and the water

- Substandard lots may be built upon as long as they have never been merged with adjacent lots

Proposed legislation (SB 472)

To provide owners of legal, nonconforming structures with greater certainty regarding the use and value of their property, SB 472 contains the following provisions:

Allows property owners to perform unlimited maintenance and repair – While zoning ordinances will change over time, such changes should not limit the ability of property owners to maintain and repair their existing homes and buildings. Protecting the ability of property owners to keep their homes in good condition and make necessary repairs will help encourage greater investment in homes, buildings and older neighborhoods.

Clarifies that NR 115 Standards for Nonconforming Structures and Substandard Lots Are Not Minimum Standards – Wisconsin's shoreland zoning regulations were recently revised to include a more reasonable approach to regulating nonconforming waterfront homes and substandard lots. Under these recent changes, nonconforming waterfront homes and substandard lots are subject to the following requirements:

- Unlimited maintenance and repair is allowed
- Expansion behind the 75-foot setback
- Vertical expansion (to a maximum height of 35 feet) only between 35 feet and 75 feet of the water if local mitigation requirements are satisfied
- No expansion between 35 feet and the water
- Substandard lots may be built upon as long as they have never been merged with adjacent lots

While Wisconsin's shoreland zoning regulations are generally considered to be minimum standards, the regulations relating to nonconforming structures and substandard lots are intended to be protections for property owners, rather than minimum standards. If counties are allowed to ignore these protections and continue to adopt more restrictive regulations on the ability of homeowners to repair, maintain and expand their homes, regulations such as the 50% rule (which limits maintenance and repairs to nonconforming homes to 50% of the home's value) will remain in effect. Moreover, counties would be able to continue to prohibit building on all substandard lots, or require them to be merged with adjacent lots owned by the same person.

To provide owners of nonconforming waterfront homes with greater certainty as to how their property can be repaired, maintained and improved, SB 472 clarifies the law to ensure that counties cannot adopt more restrictive regulations than the standards set forth in NR 115 relating to (a) maintaining and improving nonconforming structures, and (b) building on substandard lots.

If you have questions, please contact me at tlarson@wra.org or (608) 240-8254.

Nonconforming Structures
Responses from Lenders/Title Company
2/21/2012

Question Asked: Are lenders and title companies reluctant to offer financing or issue title insurance policies on nonconforming structures?

Response #1 -- If it comes to secondary market financing, yes, it's more than likely going to be an issue. When it comes to portfolio lending I think it's a whole different story. We look at each situation and determine what we think the risk will be – just because it is non-conforming does not mean that it's a denial. We believe in thinking outside of the box! But, the borrower may be stuck on fixed rate products/pricing and not interested in portfolio products.

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Response # 2 -- Mike said that 90% of the time title company aren't even aware that a property is non-conforming, but if they were made aware, for instance it's on the deed, then they would not issue title insurance because of potential litigation. However, he said if the buyer is aware (its documented) that the property is non-conforming and we could pass this legislation that takes the limitations away, then it would more likely they would issue title insurance.

Mike Strick, Evans Title/First American Title (Fox Valley area)
mstrick@firstam.com

Response #3 -- EWSB is not reluctant to lend on non-conforming properties it is just a lot more work. We usually have to check with the municipality on what exactly can be done to the property. We also try and get a rider on the homeowners insurance to cover the whole property in the event of a partial loss that is not rebuildable. Needless to say neither of the above items are always easy to acquire.

Sooo we are not reluctant, just very cautious. That being said I am sure that this could appear "reluctant" to a realtor or buyer.

Charles Schmalz
President, CEO
East Wisconsin Savings Bank

Response #4 -- I think in general the secondary market frowns upon non-conforming structures and this is more of a portfolio type product.

Our bank will support these loans provided the customer is qualified and we are able to determine an appraisal value. This would most likely be on 15 year fixed with 20% down.

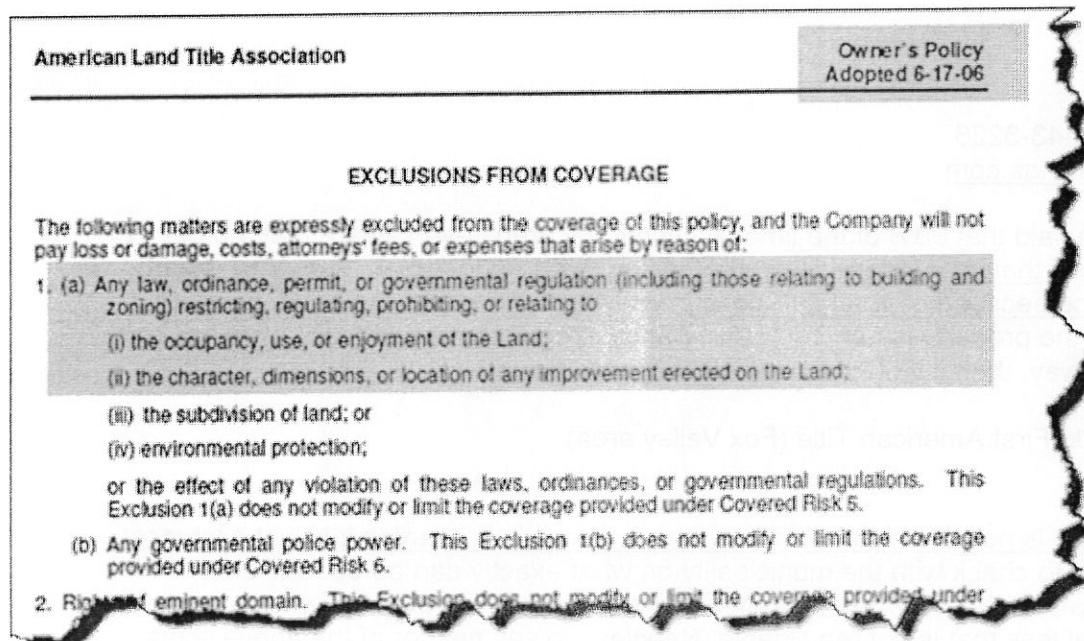
Unidentified community banker from Wisconsin (email response to question asked by Mike Semmann, Wisconsin Bankers Association)

Larson, Tom

From: Cheri Hipenbecker <cah@knightbarry.com>
Sent: Friday, January 20, 2012 3:20 PM
To: Larson, Tom
Cc: Craig Haskins
Subject: RE: Nonconforming structures
Attachments: ALTA Loan Policy 6-17-06.pdf; ALTA Owners Policy 6-17-06.pdf; Zoning Endorsement article.pdf

Hi Tom – thanks for the compliment in asking us to comment.

In response, I'm attaching an article that Craig and I wrote a number of years ago on this topic (also available here http://www.knightbarry.com/free_clear.aspx). I wouldn't say that title people are reluctant to offer policies on non-conforming structures, because the policies specifically excludes from coverage zoning issues, stating as follows on the current ALTA owner's policy jacket:



The question is whether the title insurers are willing to endorse over the exclusion and issue a zoning endorsement (ALTA 3.1) modified to include the affirmative coverage for non-conforming structures (as shown on the Chicago Title endorsement you sent). The answer of when the insurer is willing to so endorse is that the decision is made on a case by case basis. First, I can confirm that in my 5+ years with Knight Barry, to my knowledge we have been asked only a very handful of times to issue the affirmative coverage over non-conforming structures and when asked we have in all cases that I can remember been able to provide that coverage by doing our due diligence, speaking with the municipal zoning people, and satisfying ourselves (and our underwriters) that although the improvements are not in conformity under the current ordinances, the improvements may remain without modification based on some grandfathering provision in the ordinances. That isn't to say that we can always provide the coverage, just in the limited times that I have been involved in such requested we have been able to provide the coverage.

We are happy to discuss. Thanks.

Cheri Hipenbecker, Agency Counsel
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